

Subject: Re: 11-49. Progeny Test Report. Suggestion to briefly extend date for Reply Comments
Date: Thursday, March 29, 2012 10:55:37 AM PT
From: Warren Havens <warren.havens@sbcglobal.net>
To: Paul D'Ari <Paul.Dari@fcc.gov>
CC: Jimmy Stobaugh <jstobaugh@telesaurus.com>, Hugh Van Tuyl Cc: "Olcott, Bruce A." <Bruce.Olcott@squiresanders.com>, heny goldberg <hgoldberg@g2w2.com>, Laura Stefani <LStefani@G2W2.com>, "Alastair.Malarky@kapsch.net" <Alastair.Malarky@kapsch.net>, "Leighton.Brown@hklaw.com" <Leighton.Brown@hklaw.com>, "scoran@rinicoran.com" <scoran@rinicoran.com>, "Charles.Pellissier@cellnet.com" <Charles.Pellissier@cellnet.com>, Jimmy Stobaugh <jstobaugh@telesaurus.com>

Mr. D'Ari,

Re DA 12-480 issued today. I am correcting the record here:
As you see below, on Mar 20, I stated (underlining added):

I request that the FCC not act upon the above noted extension request within the noted Comments, but instead wait and act upon the revised, separately presented extension request, unless you decide on your on motion to issue such an extension

I assume you did not see that.

DA 12-480 acted on said extension request that I had withdrawn (to not act upon). DA 12-480 did not act upon the later, separately presented Suggestion to extend I submitted below. I submitted it as a suggestion, not a request, so that the FCC would not find any need to respond if it not decide to do that-- *solely in its view of the public interest as to a record in the instant matter.*

In any case, by responding to the request I asked to not act on, DA 12-480 erroneously suggests that there was a request by me to act upon, and also on the Scrib publication site I maintain to balance and correct what the public may think when an Internet search takes them to DA 12-480.

Also, while there was no request for DA 12-480 to respond to, it was released a day before the due date: if it did effect an extension, it would not be very practical at such a point in time.

I will submit this email in the docket.

- Warren Havens

From: Warren Havens <warren.havens@sbcglobal.net>
To: Paul D'Ari <Paul.Dari@fcc.gov>; Hugh Van Tuyl <Hugh.VanTuyl@fcc.gov>
Cc: Jimmy Stobaugh <jstobaugh@telesaurus.com>
Sent: Thursday, March 22, 2012 4:36 AM
Subject: Re: 11-49. Progeny Test Report. Suggestion to briefly extend date for Reply Comments

Also, I filed the below email in the docket just now.
filing and ecfs confirm are attached.
-wh

From: Warren Havens <warren.havens@sbcglobal.net>
To: Paul D'Ari <Paul.Dari@fcc.gov>; Hugh Van Tuyl <Hugh.VanTuyl@fcc.gov>
Cc: "Olcott, Bruce A." <Bruce.Olcott@squiresanders.com>; heny goldberg <hgoldberg@g2w2.com>; Laura Stefani <LStefani@G2W2.com>; "Alastair.Malarky@kapsch.net" <Alastair.Malarky@kapsch.net>; "Leighton.Brown@hklaw.com" <Leighton.Brown@hklaw.com>; "scoran@rinicoran.com" <scoran@rinicoran.com>; "Charles.Pellissier@cellnet.com" <Charles.Pellissier@cellnet.com>; Jimmy Stobaugh <jstobaugh@telesaurus.com>
Sent: Thursday, March 22, 2012 4:23 AM
Subject: Re: 11-49. Progeny Test Report. Suggestion to briefly extend date for Reply Comments

To: WTB and OET Bureau Chiefs and staff:

Suggestion to extend the deadline for replies.

1. The undersigned entities ("SkyTel") submit this suggestion to extend the deadline for Replies to Comments by approximately a week (five business days), so that parties who submitted Comments, and others that may have interest, can (i) fully review the substantial Comments, the majority of which were of a complex technical nature requiring expert analysis not immediately available, and (ii) then prepare and submit Replies. This will more fully satisfy the purpose of the two Bureaus reflected in their Public Notice, DA 12-209, promote the public interest, and better protect replying parties' private interests.

2. The Comments include the following:

12 pages: 11-49 03-15-2012 Wireless Internet Service Providers Association 7021901115.pdf

16 pages: 11-49 03-15-2012 Itron, Inc. (2 of 2) 7021901147.pdf

12 pages: 11-49 03-15-2012 Itron, Inc. (1 of 2) 7021901146.pdf

7 pages: 11-49 03-15-2012 Cellnet Technology, Inc. 7021901117.pdf

9 pages: 11-49 03-15-2012 Kapsch TrafficCom IVHS Inc. 7021901112.pdf

20 pages: 11-49. Skyel Comments with Attachment (not counting resume and certificate of service).

76 pages total. The nature and extent of these Comments were of course not known when SkyTel submitted its request to extend the Comments and Replies deadlines prior to the Comments deadline. Thus, this suggestion is based on new facts: it is not repetitive.

In addition, this is a suggestion and not a request. The Bureaus denied said extension request (but in large part did not address the facts and arguments set forth therein). SkyTel maintains that in said request its position was correct in the public interest, and reasserts those facts, arguments and position here, for reconsideration *along with the new facts noted above*. Even disregarding said past extension request content, FCC action consistent with the suggestion would be in the public interest, and in accord with its practice reflected in the authorities attached (in line) below. The Bureaus have the responsibility to determine the public interest in this matter, and SkyTel does not seek to divert the Bureaus by another formal request in this situation. Thus, it submits a suggestion.

3. Extending modestly the date for Replies will allow and more full and complete record in the public interest, as was the case in many similarly situated past proceedings where a modest extension to to file initial or reply comments was granted (see in-line attachment below). This will also allow parties with interest to more equitably protect their interests.*

* (SkyTel, among others, have Article III standing in this proceeding and underlying challenges to Progeny and its licenses. SkyTel is also a potential user of Part 15 mode in 902-928 MHz for its stated ITS purposes. SkyTel, further, has adjacent M-LMS to Progeny, and adjacent-channel interference potential further establishes standing.)

In addition, it will not prejudice any party if such a short extension is implemented. This includes Progeny since:

- Progeny is not ready to deploy for the simple reason that it did not Test its WAPS in vehicles, and service to vehicles is required under the rules and is specifically maintained in the waiver grant, whose condition was a Test and Test Report that complied with the relevant rule.

- Progeny did get any party to file supporting Comments: if it is ready to operate real-life systems with advanced technology to meet a market need, it would have had have parties that are sufficiently interested in WAPS (to use, build-operate, joint venture, etc.) to file supporting Comments to the Test condition to its waivers grant (and any seriously interested party would have taken part in such Tests, at least monitored with its own expert).

4. Authority in support of this suggestion is provided as an in-line attachment below.[*]

Respectfully,

/s/

Warren Havens

President

Skybridge Spectrum Foundation

V2G LLC

Environmental LLC

Verde Systems LLC

Telesaurus Holdings GB LLC

Intelligent Transportation & Monitoring Wireless LLC

Berkeley California

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[*] Inline attachment.

Emphasis added below.

In the Matter of Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands; Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands. DA 04-3664. 19 FCC Rcd 22827; 2004 FCC LEXIS 6573 (2004).

[T]he Wireless Telecommunications Bureau received separate requests from CTIA - the Wireless Association ("CTIA") and TerreStar Networks, Inc. ("TerreStar"), seeking extensions of the comment deadline to afford time to complete and analyze testing and technical analyses necessary to address interference concerns involving the 1915-1920 MHz and 1995-2000 MHz bands. CTIA requested a 14-day extension and TerreStar requested a 15-day extension. We find that it is in the interest of compiling a complete record to briefly extend the comment period to enable interested parties sufficient time to complete testing and to analyze the many important issues raised in the NPRM with the benefit of test results

In the Matter of Flash Comm, Inc. Request for Waiver of the Commission's Rules Regarding Its Application for Authorization in the High Frequency Band. DA 96-503. 11 FCC Rcd 11505; 1996 FCC LEXIS 1662 (1996).

[T]he Defense Information Systems Agency and the Manager, National Communications System (DISA/NCS), submitted to the Commission a request for a 30-day extension of time to file comments in response to Flash Comm's pleading. DISA/NCS assert that more technical data from Flash Comm is necessary to analyze the impact of Flash Comm's proposed system, and that more time is necessary to permit it to obtain and analyze this additional information. DISA/NCS submits that on the basis of data already submitted by Flash Comm, the proposed operation could cause harmful interference to various military communications services, as well as to some passive monitoring systems.

In the Matter of Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band. DA 10-215. 25 FCC Rcd 1229; 2010 FCC LEXIS 671 (2010):

The Commission does not routinely grant extensions of time in rule making proceedings. However, we do believe that additional time is warranted in this case due to the number of proposals received and the complex technical issues raised therein. Providing a short extension of the comment deadlines will provide interested parties with an opportunity to fully analyze and respond to the nine proposals filed.

SEVEN-DAY EXTENSION OF TIME TO FILE REPLY COMMENTS ON MOBILE WIRELESS COMPETITION NOTICE OF INQUIRY. DA 09-2207. 24 FCC Rcd 12581; 2009 FCC LEXIS 5294 (2009).

The Wireless Association ("CTIA") and Public Knowledge filed a joint request for a 14-day extension of the reply comment deadline in this proceeding to provide "sufficient time to meaningfully address the detailed economic and technical analyses submitted in the initial round of comments." n3 CTIA and Public Knowledge state that an extension "will enable affected stakeholders -- industry and consumer groups alike -- to more thoroughly evaluate the initial comments and, in turn, provide more substantive information in the reply comment cycle." n4 Such extensions may be warranted when, among other things, the additional time will serve the public interest. In the instant proceeding, we find that providing a limited extension of time of seven days would be beneficial to the development of a complete record and would serve the public interest

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Cc: "Olcott, Bruce A." <Bruce.Olcott@squiresanders.com>; Jimmy Stobaugh <jstobaugh@telesaurus.com>; heny goldberg <hgoldberg@g2w2.com>; Laura Stefani <LStefani@G2W2.com>; "Alastair.Malarky@kapsch.net" <Alastair.Malarky@kapsch.net>; "Leighton.Brown@hklaw.com" <Leighton.Brown@hklaw.com>; "scoran@rinicoran.com" <scoran@rinicoran.com>; "Charles.Pellissier@cellnet.com" <Charles.Pellissier@cellnet.com>

Sent: Tuesday, March 20, 2012 9:28 PM

Subject: 11-49. Progeny Test Report. Request to extend date for Reply Comments

Mr. D'Ari,
Mr. Van Tuyl,

Today, Tuesday, is the 3rd business day after Comments were filed. A number of parties filed Comments finding serious defects in the Progeny Test and Test Report. No parties filed Comments in support.

The Comments submitted by Entities I represent included a request to extend the deadline for Reply Comments.* When that was submitted (at the very end of the day, past COB, on the filing due date), I was aware of substantial other Comments via my office checking the docket, and in some direct communications with other parties. I also had completed with our expert our Comments with technical analysis, which were timely submitted.

After I complete getting feedback from relevant experts and others on the all of the Comments, I will be submitting soon a revised request to extend the Reply Comments deadline, with additional details. There are many and various substantive comments for analysis and response.

I request that the FCC not act upon the above noted extension request within the noted Comments, but instead wait and act upon the revised, separately presented extension request, unless you decide on your own motion to issue such an extension (it is easy to see that a modest extension request is called for considering the extent and weight of the Comments, underlying spectrum, time to date of underlying proceedings, multi-use band involved, the time it will take FCC staff to fairly review the Comments and Replies and decide, and the major value of a better record for an FCC decision in the *public* interest).

While it is apparent that Progeny will oppose any extension, there is no sound basis for that including:

(1) Progeny is not ready to deploy for the simple reason that it did not Test its WAPS in vehicles, and service to vehicles is required under the rules and is specifically maintained in the waiver grant, whose condition was a Test and Test Report that complied with the relevant rule. Thus, Progeny has no basis to argue against a modest extension.

(1) Progeny did get any party to file supporting Comments: if it is ready to operate real-life systems with advanced technology to meet a market need, it would have had have parties that are sufficiently interested in WAPS (to use, build-operate, joint venture, etc.) to file supporting Comments to the Test condition to its waivers grant (and any seriously interested party would have taken part in such Tests, at least monitored with its own expert). Thus, again, Progeny cannot show any real objection to a modest extension.

* Mr. Olcott submitted with the below email an Opposition to the extension request I submitted with the Comments. He of course can submit an Opposition to the above-noted revised extension request I will file soon. I will serve him by email, and place a phone call to provide notice, once I file the revised extension request.

I am coping here representatives of other parties that filed Comments.

Respectfully,
Warren Havens

From: "Olcott, Bruce A." <Bruce.Olcott@squiresanders.com>
To: Warren Havens <warren.havens@sbcglobal.net>
Cc: Jimmy Stobaugh <jstobaugh@telesaurus.com>
Sent: Tuesday, March 20, 2012 3:30 PM
Subject: Opposition to Second Extension Request

Please find attached a copy of the opposition that Progeny filed with the Commission this afternoon.
Thank you,

Bruce A. Olcott

Partner

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